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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/764,218 | 01/16/2001 | Jaime Vargas | 032405-042 | 7487 |
| 33109 | 7590 | 07/08/2003 | | |
| CARDICA, INC. 171 JEFFERSON DRIVE MENLO PARK, CA 94025 | | | EXAMINER | |
| | | | NGUYEN, VI X | |
| | | ART UNIT | PAPER NUMBER | |
| | | 3731 | 13 | |
| DATE MAILED: 07/08/2003 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|-----------------------------|-----------------------------|------------------|
| Offic Action Summary | Applicati n No. | Applicant(s) |
| | 09/764,218 | VARGAS ET AL. |
| | Examiner Victor X Nguyen | Art Unit 3731 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 April 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-53 is/are pending in the application.

4a) Of the above claim(s) 2-9, 17 and 19-53 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1, 10-16 and 18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10-16 and 18 are rejected under 35 U.S.C. 102 (e) as being anticipated by Yancho et al. (U.S. 6,179,849).

As to claim 1, Yancho et al show in figures 9, 10 and abstract, col. 5, lines 34-67, col. 6, lines 1-5, a method for grafting a graft vessel to a target vessel including an incision (100) in the target vessel (102); wherein placing incision tensioners (84, 86) within the incision in the target vessel (102) and tensioning the incision in the target vessel (102) with the incision tensioners (84, 86); and wherein grafting the graft vessel to the target vessel (102) while the incision (100) is tensioned.

As to claims 10 and 11, Yancho et al show in figs 9 and 10, wherein the incision (100) is tensioned to a predetermined length which corresponds to a size of the graft vessel to be grafted to the target vessel (102); and wherein pulling the incision tensioners (84, 86) with a predetermined force.

As to claim 12, the method step, “the predetermined force...,” is not given any patentable weight since the step fails to recite any structure limitations. However, the Yencho device is capable of being predetermined force in the aforementioned manner.

As to claims 13 and 14, Yencho et al show in fig. 15 and col. 17, lines 1-35, wherein the incision tensioners are clips (142 is considered clips) which include a first tine (148) and a second tine (150); and wherein both the first tine (148) and the second tine (150) are configured to penetrate both the graft vessel and the target vessel (102).

As to claims 15-16 and 18, Yencho et al show in fig. 15, wherein both the first tine (148) and the second tine (150) capture the graft vessel and the target vessel (102); wherein both the first tine (148) and the second tine (150) are configured to fold over such that the first tine (148) and the second tine (150) capture the graft vessel and the target vessel (102); and wherein the tensioning of the incision (100) allows a geometry of the incision in the target vessel (102) to remain constant during the anastomosis procedure.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No.6,248,117 to Blatter

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Art Unit: 3731

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen

Examiner

Art Unit 3731

Vn *vn.*

June 28, 2003



MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700